

## **Part 2**

### **Conditions for Providing Services**

#### **10-18-201 Limitations on providing a cable television and public telecommunications services.**

- (1) Except as provided in this chapter, a municipality may not:
  - (a) provide to one or more subscribers:
    - (i) a cable television service; or
    - (ii) a public telecommunications service; or
  - (b) for the purpose of providing a cable television service or a public telecommunications service to one or more subscribers, purchase, lease, construct, maintain, or operate any facility.
- (2) For purposes of this chapter, a municipality provides a cable television service or public telecommunications service if the municipality provides the service:
  - (a) directly or indirectly, including through an authority or instrumentality:
    - (i) acting on behalf of the municipality; or
    - (ii) for the benefit of the municipality;
  - (b) by itself;
  - (c) through:
    - (i) a partnership; or
    - (ii) joint venture; or
  - (d) by contract, resale, or otherwise.

Enacted by Chapter 83, 2001 General Session

#### **10-18-202 Required steps before a municipality may provide cable television or public telecommunications services.**

Before a municipality may engage or offer to engage in an activity described in Subsection 10-18-201(1), the legislative body of the municipality shall:

- (1) hold a preliminary public hearing;
- (2) if the legislative body elects to proceed after holding the preliminary public hearing required by Subsection (1), approve the hiring of a feasibility consultant to conduct a feasibility study in accordance with Section 10-18-203;
- (3) determine whether under the feasibility study conducted under Section 10-18-203, the average annual revenues under Subsection 10-18-203(2)(f) exceed the average annual costs under Subsection 10-18-203(2)(e) by at least the amount necessary to meet the bond obligations of any bonds issued to fund the proposed cable television services or public telecommunications services:
  - (a) based on the feasibility study's analysis:
    - (i) for the first year of the study; and
    - (ii) the five-year projection; and
  - (b) separately stated with respect to:
    - (i) the proposed cable television services; or
    - (ii) the proposed public telecommunications services;
- (4) if the conditions of Subsection (3) are met, hold the public hearings required by Section 10-18-203; and
- (5) after holding the public hearings required by Section 10-18-203, if the legislative body of the municipality elects to proceed, adopt by resolution the feasibility study.

Enacted by Chapter 83, 2001 General Session

**10-18-203 Feasibility study on providing cable television or public telecommunications services -- Public hearings.**

- (1) If a feasibility consultant is hired under Section 10-18-202, the legislative body of the municipality shall require the feasibility consultant to:
  - (a) complete the feasibility study in accordance with this section;
  - (b) submit to the legislative body by no later than 180 days from the date the feasibility consultant is hired to conduct the feasibility study:
    - (i) the full written results of the feasibility study; and
    - (ii) a summary of the results that is no longer than one page in length; and
  - (c) attend the public hearings described in Subsection (4) to:
    - (i) present the feasibility study results; and
    - (ii) respond to questions from the public.
- (2) The feasibility study described in Subsection (1) shall at a minimum consider:
  - (a)
    - (i) if the municipality is proposing to provide cable television services to subscribers, whether the municipality providing cable television services in the manner proposed by the municipality will hinder or advance competition for cable television services in the municipality; or
    - (ii) if the municipality is proposing to provide public telecommunications services to subscribers, whether the municipality providing public telecommunications services in the manner proposed by the municipality will hinder or advance competition for public telecommunications services in the municipality;
  - (b) whether but for the municipality any person would provide the proposed:
    - (i) cable television services; or
    - (ii) public telecommunications services;
  - (c) the fiscal impact on the municipality of:
    - (i) the capital investment in facilities that will be used to provide the proposed:
      - (A) cable television services; or
      - (B) public telecommunications services; and
    - (ii) the expenditure of funds for labor, financing, and administering the proposed:
      - (A) cable television services; or
      - (B) public telecommunications services;
  - (d) the projected growth in demand in the municipality for the proposed:
    - (i) cable television services; or
    - (ii) public telecommunications services;
  - (e) the projections at the time of the feasibility study and for the next five years, of a full-cost accounting for a municipality to purchase, lease, construct, maintain, or operate the facilities necessary to provide the proposed:
    - (i) cable television services; or
    - (ii) public telecommunications services; and
  - (f) the projections at the time of the feasibility study and for the next five years of the revenues to be generated from the proposed:
    - (i) cable television services; or
    - (ii) public telecommunications services.

- (3) For purposes of the financial projections required under Subsections (2)(e) and (f), the feasibility consultant shall assume that the municipality will price the proposed cable television services or public telecommunications services consistent with Subsection 10-18-303(5).
- (4) If the results of the feasibility study satisfy the revenue requirement of Subsection 10-18-202(3), the legislative body, at the next regular meeting after the legislative body receives the results of the feasibility study, shall schedule at least two public hearings to be held:
  - (a) within 60 days of the meeting at which the public hearings are scheduled;
  - (b) at least seven days apart; and
  - (c) for the purpose of allowing:
    - (i) the feasibility consultant to present the results of the feasibility study; and
    - (ii) the public to:
      - (A) become informed about the feasibility study results; and
      - (B) ask questions of the feasibility consultant about the results of the feasibility study.
- (5)
  - (a) Except as provided in Subsection (5)(b), the municipality shall publish notice of the public hearings required under Subsection (4):
    - (i) at least once a week for three consecutive weeks in a newspaper of general circulation in the municipality and at least three days before the first public hearing required under Subsection (4); and
    - (ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks, at least three days before the first public hearing required under Subsection (4).
  - (b)
    - (i) In accordance with Subsection (5)(a)(i), if there is no newspaper of general circulation in the municipality, for each 1,000 residents, the municipality shall post at least one notice of the hearings in a conspicuous place within the municipality that is likely to give notice of the hearings to the greatest number of residents of the municipality.
    - (ii) The municipality shall post the notices at least seven days before the first public hearing required under Subsection (4) is held.

Amended by Chapter 90, 2010 General Session

**10-18-204 Vote permissible -- Referendum.**

- (1)
  - (a)
    - (i) A legislative body of a municipality may, by a majority vote, call an election on whether the municipality shall provide proposed:
      - (A) cable television services; or
      - (B) public telecommunications services.
    - (ii) A municipal legislative body that, before July 1, 2016, approves the provision of public telecommunications service facilities may, by a majority vote, call an election on whether the municipality shall provide proposed public telecommunications service facilities.
  - (b) If under Subsection (1)(a) the legislative body calls an election, the election shall be held:
    - (i)
      - (A) at the next municipal general election; or
      - (B) as provided in Subsection 20A-1-203(1), at a local special election the purpose of which is authorized by this section; and
    - (ii) in accordance with Title 20A, Election Code, except as provided in this section.
  - (c)

- (i) The notice of the election called under Subsection (1)(a)(i) shall include with any other information required by law:
    - (A) a summary of the cable television services or public telecommunications services that the legislative body of the municipality proposes to provide to subscribers residing within the boundaries of the municipality;
    - (B) the feasibility study summary under Section 10-18-203;
    - (C) a statement that a full copy of the feasibility study is available for inspection and copying; and
    - (D) the location in the municipality where the feasibility study may be inspected or copied.
  - (ii) The notice of an election called under Subsection (1)(a)(ii) shall include a summary prepared by the municipality describing the proposed public communications service facilities.
- (d)
- (i) For an election called under Subsection (1)(a)(i), the ballot for the election shall pose the question substantially as follows: "Shall the [name of the municipality] provide [cable television service or public telecommunications service] to the inhabitants of the [municipality]?"
  - (ii) For an election called under Subsection (1)(a)(ii), the ballot for the election shall pose the question substantially as follows: "Shall the [name of the municipality] provide public telecommunications service facilities within [name of the municipality] by [brief description of the method or means and financing terms, including total principal and interest costs, by which the public communications service facilities will be provided]?"
- (e) The ballot proposition may not take effect until submitted to the electors and approved by the majority of those voting on the ballot.
- (2) In accordance with Title 20A, Chapter 7, Issues Submitted to the Voters, a municipal legislative body's action to have the municipality over which the legislative body presides provide cable television services or public telecommunications services is subject to local referenda.
- (3)
- (a) The results of an election called under Subsection (1)(a)(ii) are not binding and do not:
    - (i) require the municipality that called the election to take, or refrain from taking, any action; or
    - (ii) limit the municipality that called the election from taking any action authorized under Section 10-8-14 or 10-18-105.
  - (b) An election called under Subsection (1)(a)(ii) does not exempt a municipality from the applicable requirements of this Title 10, Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

Amended by Chapter 419, 2016 General Session